



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO WOODFIN HEATING, INC. FOR PC No. 2017-4065

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Woodfin Heating, Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable Regulations

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

6. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred, Interstate 95 on the ramp at Exit 69 near Commerce Road, Richmond, Virginia.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
9. "Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Unnamed tributary" means surface waters and is "state waters" under State Water Control Law and is located in the James River Basin. During the 2014 305(b)/303(d) Water Quality Integrated Report, the tributary was considered Fully Supporting with Observed Effects for the Fish Consumption Use due to a VDH fish consumption advisory for kepone. The remaining designated uses were not assessed, therefore, the creek was considered Category 2B. The stream is located within the study area for the James River and Tributaries – City of Richmond Bacterial TMDL (EPA approval 11/4/2010, SWCB approval 6/29/2012). The discharge was not addressed in the TMDL report. In addition, the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010, addresses dissolved oxygen and submerged aquatic vegetation (SAV) impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The facility was not addressed. Due to its intermittent nature, the tributary should be considered a Tier 1 water.
14. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-f44.34:23) of the State Water Control Law addresses discharge of oil into waters.

16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

SECTION C: Findings of Fact and Conclusions of Law

1. Woodfin Heating, Inc. (Woodfin) owns and operates a company that provides heating, cooling, plumbing, electrical services, and commercial fuels.
2. On the morning of August 23, 2016, the Department received notification of a discharge of oil from an overturned tanker truck, owned and operated by Woodfin, on Commerce Road near exit ramp 69, off Interstate 95 (I-95), in Richmond, Virginia. The truck had just picked up petroleum at a nearby fuel depot, and overturned while trying to turn right from Commerce Road onto the ramp for northbound I-95. The driver was reported to have lost control of the vehicle, hit a cement barrier separating the on and off ramps to I-95, overturned and came to rest on top of the cement road barrier. Petroleum began discharging from the overturned tanker onto both the on and off ramps to I-95 and Commerce Road. The tanker truck was reported to be carrying 5,501 gallons of gasoline and 3000 gallons of diesel fuel for a total of 8,501 gallons of petroleum.
3. The first responders to the report included the Richmond Fire Department, Richmond Police Department, DEQ, Environmental Protection Agency (EPA), Virginia Department of Transportation, (VDOT), Virginia Department of Emergency Management (VDEM), Woodfin, HEPACO, an environmental contracting firm specializing in emergency response and remediation, and Central Tank, LLC, another environmental contractor.
4. Petroleum was discharged to both the surrounding soil and stormwater drop inlets at the discharge site. Initial abatement measures consisted of the application of foam retardant, recovery of petroleum draining from the tanker truck using vacuum trucks, drilling holes in the tanker truck to recover a reported 679 gallons of petroleum still contained in the tanker, vacuuming pooled petroleum, and flushing storm drains/outlets located along the shoulder of the on and off ramps of I-95 to reduce the lower explosive level (LEL). The Petroleum that had migrated onto the road shoulders and nearby storms drains was vacuumed, and sorbent pads and sorbent booms were placed at the site to capture petroleum not being recovered by the vacuum truck.
5. Several hours after the initial report of the oil discharge, Richmond Marine Terminal, located on Deepwater Terminal Road, reported an oil sheen collecting in the James River along the northern part of the Richmond Marine Terminal wharf. Upon investigation, an

oil sheen was observed collecting along the wall of the wharf, and along the shoreline on the James River. The shoreline assessment revealed a discharge of petroleum from an unnamed tributary (UT) entering the James approximately ½ mile up the river from the Richmond Marine Terminal. Petroleum had entered the James River through the City of Richmond's storm sewer system serving the north side of the I-95 interchange and through the Virginia Department of Transportation storm sewer serving the south side of the I-95 interchange.

6. Cleanup efforts indicated that most of the petroleum not recovered by vacuuming at the spill site, discharged through storm drains to connective piping, and ultimately into the James River. The cleanup efforts of the James River consisted of placing booms at the locations of petroleum discharge to the river where sheen was observed, using sorbent pads, booms, sorbent sweeps and a drum skimmer to remove petroleum product. Other cleanup efforts consisted of flushing water through the storm drains at the spill area, flushing the outfall area into the UT, and the stream sediment for removal of residual trapped petroleum. The storm drains were also monitored with a 4-Gas Meter for VOCs and LELs. Cleanup activities continued along the James River shoreline, and at the cement retaining wall of the wharf at the Richmond Marine Terminal for several days.
7. On August 24, 2016, the HEPACO truck driver mobilized on the day of the spill, provided a bill of lading that the vacuum truck contained 3,200 gallons of product and 426 gallons of water for one load. Using these quantities, the consultants reported that the total amount of liquid recovered from vacuum operations is estimated at 5,857 gallons.
8. Central Tank LLC excavated the soil at the site of the discharged petroleum. The impacted soil appeared to extend 2 feet below ground surface. A total of 151.3 tons of petroleum contaminated soil was removed. It was estimated that approximately 2,294.8 gallons of petroleum product was trapped in the excavated soil. The contaminated soil was disposed of at RECO Biotechnology of Richmond, Virginia. The excavated site was then backfilled with clean crushed stone, the area seeded and covered with straw.
9. The day after the petroleum discharge, U.S. Fish and Wildlife Service assessed impacts to the UT. At the time of the assessment 50 dead American eel, 13 dead southern leopard frogs, 1 dead bullhead catfish, 1 dead darter and 1 dead killifish were observed.
10. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
11. On September 27, 2016, the Department issued Notice of Violation No. 16/9/PRO-501 to Woodfin for a discharge of oil to state waters which resulted in a sheen upon and discoloration of state waters and for the resulting impacts to wildlife.

12. On October 26, 2016, DEQ staff met with representatives of Woodfin and their consultants to discuss the petroleum discharge, the emergency response, spill control and clean-up activities. At the October 26, 2016 meeting, Woodfin submitted a report summarizing the petroleum discharge, corrective actions and current status of the incident.
13. On November 29, 2016, DEQ received the "Initial Abatement Report/Site Characterization Report" submitted by HETI, consultant for Woodfin, which described the cause, extent and impact of the petroleum discharge from the tanker truck, the remediation activities, and restoration of the site.
14. The restoration of the site was completed by August 30, 2016, and closure of the site was completed by September 7, 2016. Woodfin notified DEQ that approximately 7822 gallons of the 8501 gallons of petroleum in the tanker truck was discharged to the environment. It was reported that approximately 679 gallons of petroleum was removed from the tanker, approximately 5,857 gallons of liquid product was recovered from vacuum operations, and approximately 2,294.8 gallons of petroleum product trapped in the soil was excavated and removed for disposal.
15. By letter dated May 23, 2017, DEQ notified Woodfin that no further assessment or corrective action were required at the discharge site
16. Based on the results of the August 23, 2016 through August 30, 2016 petroleum discharge investigation, the October 26, 2016 meeting, and the November 29, 2016 Initial Abatement Report/Site Characterization Report, the Board concludes that Woodfin has violated the Va. Code § 62.1-44.34:18, by discharging oil, in the form of gasoline and diesel fuel, into state waters causing a sheen, discoloration, and the resulting impact to the environment as described in paragraphs C(2) through C(10), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ **62.1-44.34:20** and upon consideration of Va. Code § 10.1-1186.2, the Board orders Woodfin, and Woodfin agrees:

1. To pay a civil charge of \$18,740 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;
2. Reimburse DEQ \$9,568.23 for oil discharge investigative costs within 30 days of the effective date of the Order;

Payment shall be made by one check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Woodfin shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF); that the payment of the fish replacement costs is for the Department of Game and Inland Fisheries; and, that payment of the fish kill investigative costs is for reimbursement of DEQ expenditures. If the Department has to refer collection of moneys due under this Order to the Department of Law, Woodfin shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Woodfin for good cause shown by Woodfin, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Woodfin admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Woodfin consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Woodfin declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Woodfin to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 8. Woodfin shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Woodfin shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Woodfin shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.
- Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Woodfin intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
 10. This Order shall become effective upon execution by both the Director or his designee and Woodfin. Nevertheless, Woodfin agrees to be bound by any compliance date which precedes the effective date of this Order.
 11. This Order shall continue in effect until:
 - a. Woodfin petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Woodfin.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Woodfin from its obligation to comply with any statute, regulation, permit

condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Woodfin and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Woodfin certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Woodfin to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Woodfin.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Woodfin voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of February, 2018.

pp. JDM Brownell
Jefferson D. Reynolds, Enforcement Director
Department of Environmental Quality

Woodfin Heating, Inc. voluntarily agrees to the issuance of this Order.

Date: 12-20-17 By: [Signature] president
(Person) (Title)
Woodfin Heating, Inc.

Commonwealth of Virginia

City/County of Hanover

The foregoing document was signed and acknowledged before me this 20 day of

Dec., 2017, by Justin Andrews who is
President of Woodfin Heating, Inc. on behalf of the corporation.

[Signature]
Notary Public

339648
Registration No.

My commission expires: May 31, 2019

Notary seal:

